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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/528,167	03/17/2000	Shiri Kadambi	P108339-09007	3009

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EXAMINER

HOANG, THAI D

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/528,167

Applicant(s)

KADAMBI ET AL.

Examiner

Thai D Hoang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed on 07/23/2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,3,6 and 9-11 is/are allowed.
- 6) ☒ Claim(s) 1,4-5 and 7-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 4-5, and 7-8 are rejected under 35 U.S.C. 102(e) as being unpatentable over Zornig et al, US Patent No. 5,742,587, hereafter referred to as Zornig.

Regarding claims 1, 5 and 8, Zornig discloses a method and system for load balancing port switching hub. Figures 1, 3 and 6 in the system disclosed by Zornig illustrates that the data from a plurality of workstations are combined to transmit in a logical link. Zornig discloses that the method comprises a programmable controller or embedded computer program estimates the traffic load on each channel based on information available from the port controllers. The control program further predicts the

effect of reassigning the ports to different channels based on available data, internal models of network behavior, and other constraints such as address assignment, and changes the port assignment so as to achieve a goal, such as balancing of traffic load or assignment (abstract). Zornig discloses that the system comprises a port traffic counters that can be counters of octets, frames or other measures of network traffic (col. 7, lines 61-64). Furthermore, Zornig disclose that for each channel that has an above average ChannelLoad at 530 (fig. 5), each port that is participating is evaluated at 542 to determine whether, if its APortLoad were added to the ChannelLoad of the channel with the smallest ChannelLoad, that channel would still have a ChannelLoad below the average. If such a port is found, the port is reassigned to the new channel, and the ChannelLoads are adjusted to reflect the change (fig. 2-5; col. 9, lines 6-13).

Regarding claims 4, 7, Zornig discloses that if an available port is found, the port is reassigned to the new channel, and the ChannelLoads are adjusted to reflect the change (col. 9, lines 6-13.)

Allowable Subject Matter

Claims 2-3, 6 and 9-11 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Zornig discloses a method and system for load balancing port switching hub. Each independent claim of the present application recites the following features:

A method for load balancing in a link aggregation environment comprising the steps of:

determining a packet flow is a candidate for link switching from a first link to a second link if the packet flow exceeds a predetermined threshold, wherein the step of determining if the packet flow is a candidate for link switching further comprises the steps of:

determining if a first packet in the packet flow is larger than a second packet in said packet flow; and

determining if a transmitting queue depth is sufficient to receive the second packet in the packet flow as recited in claims 2, 6 and 9

Response to Arguments

Applicant's arguments filed 07/23/2003 have been fully considered but they are not persuasive.

Regarding claims 1,4-5 and 7-8, in page 10 of the remarks Applicants argue that the ports and channels of the reference are not trunked together to form a single logical link. Examiner respectfully disagrees. Applicants are directed to figures 1, 3 and 6 where the reference shows the data received from a plurality of workstations are combined to transmit in a logical link.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai D Hoang whose telephone number is (703) 305-3232. The examiner can normally be reached on Monday-Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (703) 305-4378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

Thai Hoang


CHI PHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

9/25/03